§523(a)(6)
Conversion of Collateral

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of: GILBERT EDWARD BIEBER (Chapter 7 Case 89-41186) Debtor TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. Plaintiff v. GILBERT EDWARD BIEBER Defendant	Adversary Proceeding Number 89-4129

FILED
at 12 O'clock & 45 min. PM
Date 5/8/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

MEMORANDUM AND ORDER

On March 1, 1990, a trial was held on the complaint to determine dischargeability filed in the above-captioned case by Trust Company of Georgia Bank of Savannah, N.A. After consideration of the evidence adduced at trial, the documentation submitted by the parties, and applicable authorities I make the following Findings

of Fact and Conclusions of Law.

FINDINGS OF FACT

On or about June 15, 1989, Gilbert E. Bieber, the president and sole stockholder of C.T.M., Inc., applied for a loan for C.T.M. Inc., in the amount of $15,000.00 from Trust Company of Georgia Bank of Savannah, N.A. ("Trust Company"). Pursuant to that request, Debtor presented to the Bank certain corporate and personal financial statements and a list of automobile repair tools and office equipment which Debtor valued in excess of $21,000.00 (Exhibits P-1, P-2 and P-3).

Prior to making the loan, Mr. Porter Cope, Trust Company's lending officer, visited Debtor's place of business and verified that all of the equipment was physically present and in good operating condition. After verifying the existence and condition of the equipment, Trust Company made the $15,000.00 loan to C.T.M., Inc. The loan was personally guaranteed by the Debtor.

In late December, 1985, Debtor closed his place of business. According to Debtor's testimony, he was upset by the

closing of his business and marital problems which he experienced with his wife at the time. Debtor stated that he simply locked the doors and walked away from the business. He did not recall whether he notified Trust Company that the items of collateral which secured the Bank's loan were left in the abandoned business premises.

On March 15, 1986, Debtor and his wife renewed the loan with Trust Company, paying only the interest due on the loan (Exhibit P-12). At that time, Debtor and his wife executed another bill of sale to secure debt and security agreement whereby they again pledged the automobile repair equipment and office furnishings to secure the loan (Exhibit P-13). Debtor did not advise Trust Company that he no longer possessed the items pledged.

In July of 1986, Trust Company officials went to the Debtor's residence for the purpose of obtaining a boat key and gas tank, components of a boat, motor and trailer outfit which the Bank had previously repossessed from Debtor. The Bank's officials noticed that certain items of equipment and tools were located in Debtor's garage. The Bank officials inquired of Debtor as to whether the equipment in the garage was the same equipment pledged to the Bank as collateral. Debtor responded that it was part of the collateral.

The Trust Company officials attempted to get Debtor to either surrender possession of the collateral or to agree to a public auction of the tools and equipment. Debtor refused to deliver possession of the collateral or to acquiesce to an auction and advised the Trust Company officials there was "no way in hell they were going to get his tools."

On August 15, 1986, Debtor and his wife again renewed the loan without principle reduction (Exhibit P-17). At that time, Debtor again signed a bill of sale and security agreement, once more pledging the equipment and tools (Exhibit P-18). According to the Bank officials, the Debtor never advised that he did not possess the items of collateral which he pledged as security. The loan was placed on an installment payment basis and Debtor made payments on the loan through late 1987 at which time payments ceased. The balance due on said note is $24,211.71 including unmatured interest.

When Debtor filed his Chapter 7 bankruptcy, the Bank officials attempted to locate the collateral which secured their loan. Debtor then advised Trust Company that he did not have the equipment and tools since he had abandoned them in December of 1985 when he closed his business.

CONCLUSIONS OF LAW

Trust Company seeks to have the indebtedness owed to it declared non-dischargeable under the provisions of 11 U.S.C. Section 523(a)(6). This Code section provides that it is grounds for non-dischargeability if the Debtor willfully and maliciously causes injury to another or to the property of another.

11 U.S.C. Section 523(a)(6) provides in relevant part:

> A discharge . . . does not discharge an individual debtor from any debt--
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

The Eleventh Circuit in Chrysler Credit Corp. v. Rebhan, 842 F.2d 1257 (11th Cir. 1988), approved and adopted the approach set forth in United Bank of Southgate v. Nelson, 35 B.R. 766 (M.D. Ill. 1983), in construing the "willful and malicious" element of 11 U.S.C. Section 523(a)(6). Under Southgate, "willful means deliberate or intentional" and "malice for purposes of section 523(a)(6) can be established by a finding of implied or constructive malice". Rebhan

at 1263. "Thus, the conversion must not be accidental or the result of negligence. Moreover, while 'malice' does not require an 'intent to harm', the debtor must know that the conversion is inconsistent with the rights of another." In re Alfred Dowdy, CV588-033, 6 (S.D. Ga. July 20, 1988) (emphasis original). Finally, "[t]here is no question but that the party seeking to except a debt from discharge must prove the willfulness and maliciousness of the act by clear and convincing evidence." Rebhan at 1262, citing Matter of Wise, 6 B.R. 867 (Bankr. N.D.Fla. 1980).

"Injuries within the meaning of the exception are not confined to physical damage or destruction; but an injury to intangible personal or property rights is sufficient." 3 Collier on Bankruptcy, ¶523.16 at 523-118 (15th Ed. 1989).

"[A] willful and malicious injury does not follow as of course from every act of conversion, without reference to the circumstances. There may be a conversion which is innocent or technical, an unauthorized assumption of dominion without willfulness or malice. There may be an honest but mistaken belief, engendered by a course of dealing, that powers have been enlarged or incapacities removed. In these and like cases, what is done is a tort, but not a willful and malicious one." Davis v. Aetna Acceptance Co., 293 U.S. 328, 331, 55 S.Ct. 151, 153 (1934)

(citations omitted).

Debtor knew that the property which he abandoned had been pledged to the Bank as security. Debtor was aware that this property had substantial value; having given Trust Company written documentation that it had a value exceeding $21,000.00 and having told the Bank at the time of one of the renewals that the property was worth $25,000.00. The willful abandonment of the collateral by Debtor coupled with his failure to notify the Bank constitutes conversion of the collateral and justifies the inference of malice on his part.

Because of the Debtor's actions, the debt is found to be non-dischargeable in the amount of $24,211.71, less any unmatured interest which may accrue after the date of this Order.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt of Gilbert Edward Bieber to Trust Company of Georgia Bank of Savannah, N.A., is non-dischargeable in the amount of $24,211.71, less any

unmatured interest which may accrue after the date of this Order.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 4th day of May, 1990.

BK 95
(Rev. 8/83)

FILED
at 12 O'clock & 45 min. P M
Date 5/8/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

United States Bankruptcy Court

For the SOUTHERN District of GEORGIA

TRUST COMPANY BANK OF GEORGIA
BANK OF SAVANNAH, N.A.
Plaintiff

v.

GILBERT EDWARD BIEBER
Defendant

Case No. 89-41186

Adversary Proceeding No. 89-4129

JUDGMENT

☐ This proceeding having come on for trial or hearing before the court, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

☐ This proceeding having come on for trial before the court and a jury, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

That the Plaintiff, TRUST COMPANY BANK OF GEORGIA BANK OF SAVANNAH, N.A., shall recover of the Defendant, GILBERT EDWARD BIEBER, the principal sum of Twenty-Four Thousand Two Hundred Eleven Dollars and Seventy-One Cents ($24,211.71), less any unmatured interest which may accrue after the date of this Judgment.

[Seal of the U.S. Bankruptcy Court]

Date of issuance: May 4, 1990

MARY C. BECTON
Clerk of Bankruptcy Court

By: Patsy C. Burkhalter
Deputy Clerk